



PUBLIC NOTICE

Federal Communications Commission
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DA 04-271
Released: February 3, 2004

DOMESTIC SECTION 214 APPLICATION FILED FOR ACQUISITION OF ASSETS OF SAVVIS ASSETS HOLDINGS, INC. BY CABLE AND WIRELESS USA, INC.

STREAMLINED PLEADING CYCLE ESTABLISHED

WC Docket No. 04-18

Comments Due: February 17, 2004

Reply Comments Due: February 24, 2004

On January 26, 2004, Cable and Wireless USA, Inc., Debtor-in-Possession (C&W USA) and SAVVIS Asset Holdings, Inc. (SAVVIS) (together, Applicants), pursuant to sections 63.03 and 63.04 of the Commission's rules,¹ requested consent to acquire substantially all of C&W USA's assets.²

Applicants assert that this transaction is entitled to presumptive streamlined treatment pursuant to section 63.03(b)(2)(ii) because the proposed transaction would result in SAVVIS having a market share in the interstate, interexchange market of substantially less than 10 percent, SAVVIS (or its affiliates) would provide competitive telephone exchange services or exchange access services exclusively in geographic areas served by a dominant local exchange carrier that is not a party to the proposed transaction, and C&W USA is a non-dominant carrier in the domestic marketplace and provides no regulated telecommunications services within the geographic area where SAVVIS's affiliate, Valor Telecommunications, LLC (Valor), is dominant.³

¹ 47 C.F.R. §§ 63.03, 63.04, *see* 47 U.S.C. § 214

² Applicants state that they have filed applications for global international section 214 authority for SAVVIS and consent to transfer control of C&W USA's international assets. Any action on this domestic section 214 application is without prejudice to Commission action on other related pending applications.

³ 47 C.F.R. § 63.03(b)(2)(ii), *see* Letter from Sara F. Leibman to Marlene H. Dortch, Secretary, Federal Communications Commission, WC Docket No. 04-18 (filed Jan. 30, 2004) (Jan. 30 Letter).

C&W USA is a wholly-owned subsidiary of Cable & Wireless Holdings, Inc., which is, in turn, ultimately a wholly-owned subsidiary of Cable and Wireless plc, a publicly-held corporation, incorporated under the laws of the United Kingdom. C&W USA provides a wide variety of Internet, data, web hosting and communications services.

SAVVIS is a Delaware corporation. SAVVIS Communications Corporation, the parent company of SAVVIS, is a managed services provider that delivers private Internet Protocol (IP) virtual private networks, hosting, and IP voice and data application services to businesses. Welsh, Carson, Anderson & Stowe (Welsh Carson) holds a 55% indirect interest in SAVVIS. Welsh Carson also holds a 55% ownership interest in Valor, a rural incumbent local exchange carrier in Texas, New Mexico, Arkansas and Oklahoma. Welsh Carson also has a 56% ownership interest in ITC^DeltaCom, a competitive local exchange carrier in the southeastern United States, and a 52% ownership interest in Centennial Communications Corporation, a wireless services provider in the United States and an integrated communications services provider in the Caribbean. Reuters Group plc, has a 100% ownership interest in Reuters Holdings Switzerland S.A., which has a 16% ownership interest in SAVVIS Communications Corp.

On December 8, 2003, C&W USA, certain of its subsidiaries and certain other affiliates (C&W USA et al.) filed voluntary petitions under Chapter 11 of the U.S. Bankruptcy Code in the U.S. Bankruptcy Court for the District of Delaware (Bankruptcy Court) to reorganize their business and financial structure. C&W USA et al. also filed a Plan of Reorganization and other required documents with the Bankruptcy Court. Through a competitive auction for the C&W USA et al. assets, SAVVIS submitted the winning bid on January 22, 2004 and entered into a binding asset purchase agreement, which was approved by the Bankruptcy Court on January 23, 2004. Under the terms of the sale, substantially all of C&W USA's assets will transfer to SAVVIS, including C&W USA's Tier 1 IP network providing a range of IP network services as well as private lines and comprehensive hosting services, including 15 data centers, and a complete range of managed hosting, consulting and infrastructure services. The terms of the asset purchase agreement and the Sale Order entered by the Bankruptcy Court, anticipate a final closing of the transaction on or before March 5, 2004.⁴

⁴ To the extent the required regulatory approvals are not in place by the time other closing conditions are met, Applicants state that they are obligated under the terms of the asset purchase agreement and the Sale Order to fund an escrow account and transfer title of the regulated assets into escrow on February 13, 2004. SAVVIS will begin providing certain management services to C&W USA as of the same date pursuant to the terms of a Management Agreement. Legal title and operational control of C&W USA's regulated assets will transfer as requisite regulatory approvals are obtained, subject to a requirement that the final closing occur on or before March 5, 2004. On January 30, 2004, the Bankruptcy Court entered a Stipulation and Order that clarified that "the FCC retains the right to review the regulatory applications and the associated transactions on their merits for conformity to all applicable FCC statutory and regulatory requirements, and nothing in the Order [approving the Asset Purchase Agreement] shall be construed as limiting or constraining that regulatory review or other actions the FCC is authorized to take." Stipulation and Order, *In re Cable & Wireless USA, Inc et al*, Case No. 03-13711 (CGC) (Bankr D Del.) (entered Jan 30, 2004); see also Letter from Sara F Leibman to Marlene H. Dortch, Secretary, Federal Communications Commission, ITC-ASG-2004012600029 and WC Docket No. 04-18 (filed Feb. 3, 2004).

The Applicants assert that grant of the proposed transaction would serve the public interest. The Applicants state the proposed transaction is not expected to result in a loss or impairment of service to the C&W USA customers that would be affected by consummation of the proposed transaction. Applicants maintain that SAVVIS will continue to abide by the terms and conditions of the customers' existing contracts. Thus, Applicants contend, the proposed asset sale will be virtually transparent to customers in terms of the services that they receive. Moreover, Applicants argue that the proposed transaction will maintain a sustainable provider of competitive services in the telecommunications marketplace.

GENERAL INFORMATION

The acquisition of assets application identified herein has been found, upon initial review, to be acceptable for filing as a streamlined application. The Commission reserves the right to return any transfer application if, upon further examination, it is determined to be defective and not in conformance with the Commission's rules and policies. Interested parties may file **comments by February 17, 2004, and reply comments by February 24, 2004.**⁵ Unless otherwise notified by the Commission, Applicants are permitted to transfer on the 31st day after the date of this notice.⁶ Comments may be filed using the Commission's Electronic Comment Filing System (ECFS) or by filing paper copies. See *Electronic Filing of Documents in Rulemaking Proceedings*, 63 Fed. Reg. 24121 (1998).

Comments filed through the ECFS can be sent as an electronic file via the Internet to <<http://www.fcc.gov/e-file/ecfs.html>> Generally, only one copy of an electronic submission must be filed. If multiple docket or rulemaking numbers appear in the caption of this proceeding, however, commenters must transmit one electronic copy of the comments to each docket or rulemaking number referenced in the caption. In completing the transmittal screen, commenters should include their full name, U.S. Postal Service mailing address, and the applicable docket or rulemaking number. Parties may also submit an electronic comment by Internet e-mail. To get filing instructions for e-mail comments, commenters should send e-mail to ecfs@fcc.gov, and should include the following words in the subject line "get form <your e-mail address>." A sample form and directions will be sent in reply.

Parties who choose to file by paper must file an original and four copies of each filing. If more than one docket or rulemaking number appears in the caption of this proceeding, commenters must submit two additional copies for each additional docket or rulemaking number. Filings can be sent by hand or messenger delivery, by commercial overnight courier, or by first-class or overnight U.S. Postal Service mail (although we continue to experience delays in receiving U.S. Postal Service mail). The Commission's contractor, Natek, Inc., will receive hand-delivered or messenger-delivered paper filings for the Commission's Secretary at 236 Massachusetts Avenue, N.E., Suite 110, Washington, D.C. 20002. The filing hours at this

⁵ See 47 C.F.R. § 63.03(a)

⁶ Such authorization is conditioned upon receipt of any other necessary approvals from the Commission in connection with the proposed transaction.

location are 8:00 a.m. to 7:00 p.m. All hand deliveries must be held together with rubber bands or fasteners. Any envelopes must be disposed of before entering the building. Commercial overnight mail (other than U.S. Postal Service Express Mail and Priority Mail) must be sent to 9300 East Hampton Drive, Capitol Heights, MD 20743. U.S. Postal Service first-class mail, Express Mail, and Priority Mail should be addressed to 445 12th Street, SW, Washington, D.C. 20554. All filings must be addressed to the Commission's Secretary, Office of the Secretary, Federal Communications Commission.

In addition, one copy of each pleading must be sent to each of the following:

- (1) the Commission's duplicating contractor, Qualex International, 445 12th Street, S.W., Room CY-B402, Washington, D.C. 20554; e-mail: qualexint@aol.com; facsimile: (202) 863-2898; phone: (202) 863-2893;
- (2) Tracey Wilson-Parker, Competition Policy Division, Wireline Competition Bureau, 445 12th Street, S.W., Room 5-C437, Washington, D.C. 20554; e-mail: Tracey.Wilson-Parker@fcc.gov;
- (3) Dennis Johnson, Competition Policy Division, Wireline Competition Bureau, 445 12th Street, S.W., Room 6-A461, Washington, D.C. 20554; e-mail: Dennis.Johnson@fcc.gov;
- (4) Julie Veach, Competition Policy Division, Wireline Competition Bureau, 445 12th Street, S.W., Room 5-C124, Washington, D.C. 20554; e-mail: Julie.Veach@fcc.gov;
- (5) Christopher Killion, Office of General Counsel, 445 12th Street, S.W., Room 8-C740, Washington, D.C. 20554; e-mail: Christopher.Killion@fcc.gov.

Filings and comments are also available for public inspection and copying during regular business hours at the FCC Reference Information Center, Portals II, 445 12th Street, SW, Room CY-A257, Washington, DC 20554. They may also be purchased from the Commission's duplicating contractor, Qualex International, Portals II, 445 12th Street, SW, Room CY-B402, Washington, DC 20554, telephone 202-863-2893, facsimile 202-863-2898, or via e-mail qualexint@aol.com.

For further information, please contact Tracey Wilson-Parker at (202) 418-1394 or Dennis Johnson at (202) 418-0809.

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